

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Williams

February 13, 2014

An act to amend Sections 7201 and 10261 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as amended, Williams. Public contracts: ~~payment~~ *payment*.

Existing law authorizes the retention proceeds withheld from any payment by an awarding entity, as described, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor to exceed 5% on specific projects where the director of the *applicable* department, *as specified*, has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention, ~~as specified~~, *and the department or public entity includes both this finding and the actual retention amount in the bid documents*.

This bill ~~would indicate the intent of the Legislature to define the term “substantially complex” for purposes of these provisions,~~ *instead of requiring that the finding and actual retention amount be included in the bid documents, would require that the bid documents include details explaining the basis for the finding in addition to the actual retention amount. The bill would also define projects that are not “substantially complex.”*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7201 of the Public Contract Code is amended to read:

7201. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 2012, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) Under no circumstances shall any provision of this section be construed to limit the ability of any public entity to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for in subdivision (c) of Section 7107. In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

(3) For purposes of this section, “public entity” means the state, including every state agency, office, department, division, bureau, board, or commission, the California State University, the University of California, a city, county, city and county, including charter cities and charter counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) (1) The retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price. In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the public entity and the original contractor.

(2) This subdivision shall not apply if the contractor provides written notice to the subcontractor, pursuant to subdivision (c) of Section 4108, prior to, or at, the time that the bid is requested, that bonds shall be required, and the subcontractor subsequently is

1 unable or refuses to furnish to the contractor a performance and
2 payment bond issued by an admitted surety insurer.

3 (3) Notwithstanding any other provision of this subdivision, the
4 retention proceeds withheld from any payment by an awarding
5 entity set forth in paragraphs (1) to (5), inclusive, of subdivision
6 (a) of Section 10106, from the original contractor, by the original
7 contractor from any subcontractor, and by a subcontractor from
8 any subcontractor thereunder, may exceed 5 percent on specific
9 projects where the director of the department has made a finding
10 prior to the bid that the project is substantially complex, as defined,
11 and therefore requires a higher retention amount than 5 percent
12 and the department includes ~~both this finding and the actual~~
13 ~~retention amount in the bid documents.~~ *in the bid documents details*
14 *explaining the basis for the finding and the actual retention*
15 *amount.* In a contract between the original contractor and a
16 subcontractor, and in a contract between a subcontractor and any
17 subcontractor thereunder, the percentage of the retention proceeds
18 withheld shall not exceed the percentage specified in the contract
19 between the department and the original contractor.

20 (4) Notwithstanding any other provision of this subdivision, the
21 retention proceeds withheld from any payment by the awarding
22 entity of a city, county, city and county, including charter cities
23 and charter counties, district, special district, public authority,
24 political subdivision, public corporation, or nonprofit transit
25 corporation wholly owned by a public agency and formed to carry
26 out the purposes of the public agency, from the original contractor,
27 by the original contractor from any subcontractor, and by a
28 subcontractor from any subcontractor thereunder, may exceed 5
29 percent on specific projects where the governing body of the public
30 entity or designee, including, but not limited to, a general manager
31 or other director of an appropriate department, has approved a
32 finding, *on a project by project basis*, during a properly noticed
33 and normally scheduled public hearing and prior to bid that the
34 project is substantially complex, as defined, and therefore requires
35 a higher retention amount than 5 percent and the awarding entity
36 includes ~~both this finding and the actual retention amount in the~~
37 ~~bid documents.~~ *in the bid documents details explaining the basis*
38 *for the finding and the actual retention amount.* In a contract
39 between the original contractor and a subcontractor, and in a
40 contract between a subcontractor and any subcontractor thereunder,

1 the percentage of the retention proceeds withheld shall not exceed
2 the percentage specified in the contract between the department
3 and the original contractor.

4 (5) As used in this subdivision, *projects are not* “substantially
5 complex” ~~means _____~~. *if they are either of the following:*

6 (A) *Regularly, customarily, or routinely performed by the agency*
7 *or by licensed contractors.*

8 (B) *Maintenance projects.*

9 (c) A party identified in subdivision (a) shall not require any
10 other party to waive any provision of this section.

11 (d) This section shall remain in effect only until January 1, 2016,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2016, deletes or extends that date.

14 SEC. 2. Section 10261 of the Public Contract Code, as amended
15 by Section 6 of Chapter 700 of the Statutes of 2011, is amended
16 to read:

17 10261. (a) Payments upon contracts shall be made as the
18 department prescribes upon estimates made and approved by the
19 department, but progress payments shall not be made in excess of
20 100 percent of the percentage of actual work completed plus a like
21 percentage of the value of material delivered on the ground or
22 stored subject to or under the control of the state, and unused,
23 except as otherwise provided in this section. The department shall
24 withhold not more than 5 percent of the contract price until final
25 completion and acceptance of the project. However, at any time
26 after 95 percent of the work has been completed, the department
27 may reduce the funds withheld to an amount not less than 125
28 percent of the estimated value of the work yet to be completed, as
29 determined by the department, if the reduction has been approved,
30 in writing, by the surety on the performance bond and by the surety
31 on the payment bond. The Controller shall draw his or her warrants
32 upon estimates so made and approved by the department and the
33 Treasurer shall pay them. The funds may be released by electronic
34 transfer if that procedure is requested by the contractor, in writing,
35 and if the public entity has, in place at the time of the request, the
36 mechanism for the transfer.

37 (b) (1) Notwithstanding this section, when the director of the
38 department has made a finding prior to the bid that a specified
39 project is substantially complex, as defined, and therefore requires
40 a higher retention amount than 5 percent, and the department

1 includes ~~both this finding and the actual retention amount in the~~
2 ~~bid documents~~, *in the bid documents details explaining the basis*
3 *for the finding and the actual retention amount*, then payments
4 upon contracts by the department shall be made as the department
5 prescribes upon estimates made and approved by the department.
6 However, progress payments shall not be made in excess of 95
7 percent of the percentage of actual work completed, plus a like
8 percentage of the value of material delivered on the ground or
9 stored, subject to, or under the control of the state, and unused,
10 except as otherwise provided in this section. At any time after 95
11 percent of the work has been completed, the department may reduce
12 the funds withheld to an amount not less than 125 percent of the
13 estimated value of the work yet to be completed, as determined
14 by the department, if the reduction has been approved, in writing,
15 by the surety on the performance bond and by the surety on the
16 payment bond. The Controller shall draw his or her warrants upon
17 estimates so made and approved by the department and the
18 Treasurer shall pay them with funds appropriated therefor. The
19 funds may be released by electronic transfer if that procedure is
20 requested by the contractor, in writing, and if the public entity has,
21 in place at the time of the request, the mechanism for the transfer.
22 (2) As used in this subdivision, *projects are not* “substantially
23 complex” ~~means _____~~. *if they are either of the following:*
24 (A) *Regularly, customarily, or routinely performed by the agency*
25 *or by licensed contractors.*
26 (B) *Maintenance projects.*
27 (c) This section shall remain in effect only until January 1, 2016,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2016, deletes or extends that date.